IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11688 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHOKKUMAR ALIAS ASHOK MARVADIREVATMAL AGRAVAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11688 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MR HM PRACHCHHAK AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 18/01/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the

petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Ahmedabad City, on 16th of July 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is in detention as bootlegger from 16th of July, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that two crimes came to be registered against the petitioner on 22nd August, 2003 and on 28th of February, 2004, one before Kanabha Police Station and the other before Prohibition Police Station, Southern Zone, under Sections 66(1)-B, 81 and 83 of the Bombay Prohibition Act. It was alleged that the petitioner was in possession of about 1169 bottles of foreign liquor in one case while 370 bottles of foreign liquor in the second case. The detaining authority took into consideration extensively the whole investigation papers of both the crimes registered against the petitioner and came to the conclusion that the petitioner was dealing in storing, selling and transporting the liquor knowing fully well that the consumption of the liquor is injurious to the public health. As per the detaining authority, the petitioner, on account of the above material before him was a bootlegger and his antisocial activity, which was prejudicial to the maintenance of public order and adversely affecting public health, was required to be prevented forthwith, for which the steps under general law was likely to take time. Therefore, the order of detention as aforesaid came to be passed against the petitioner which is under challenge in this petition.

4. Learned Advocate Mrs. Subhadra G. Patel for the petitioner and learned AGP Mr. HM Prachchhak for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record by learned AGP is also taken into consideration.

5. Out of various grounds urged on behalf of the petitioner and controverted by learned AGP, it appears that this petition can be examined and disposed of only on the issue that whether there was any material placed before the detaining authority to come to the conclusion that by the activity of the petitioner the public order was disturbed and public health was adversely affected. The fact of the present case are squarely covered by a decision of the Division Bench of this Court, in the matter of ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI vs. POLICE COMMISSIONER, SURAT and Ors. as reported in 2000 (1) GLH

393, wherein the Division Bench of this Court after considering the decision of the Apex Court came to the conclusion that merely filing of criminal case under the Bombay Prohibition Act against the detenu would not lead to interference that his activities were prejudicial to the maintenance of public order and adversely affecting to the public health. There must be some credible material before the detaining authority to come to a conclusion that the activity of the petitioner was affecting the public order. A line has to be drawn between "breach of public order " and "breach of law and order". The registration of cases under the Bombay Prohibition Act against the petitioner, at the most, may be the breach of law and order, for which he may be punished, but the fact constituting the offences itself cannot be construed to be prejudicial to the maintenance of public order especially in absence of credible material before the detaining authority. In this view of the the subjective satisfaction reached by the detaining authority cannot be said to be legal, valid and in accordance with law, so far as it relates to the breach of public order. In this view of the matter, order under challenge is required to be quashed and set aside.

7. In the result,the petition is allowed. The order passed by Commissioner of Police, Ahmedabad City, on 16th of July, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The petitioner - Ashokkumar alias Ashok Marvadi Revatmal Agraval is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair